Republic of the Philippines
Supreme Court
Manila

EN BANC

MUNICIPALITY OF TUPI, represented by its Municipal Mayor Reynaldo S. Tamayo, Jr., Petitioner,	**G.R. No. 231896** Members:
- versus -	**BERSAMIN,* *C.J.*, CARPIO, *J.* PERALTA, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA,** A. REYES, JR., GESMUNDO,*** J. REYES, JR., HERNANDO, CARANDANG, LAZARO-JAVIER, INTING, and ZALAMEDA, *JJ.***
HERMINIO B. FAUSTINO, Respondent.	Promulgated: August 20, 2019

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D E C I S I O N

LAZARO-JAVIER, *J.*:

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* On official leave.
** On leave.
*** On official leave.

PREFATORY

Does the end justify the means? Petitioner Municipality of Tupi enacted a speed limit ordinance which in practice reduced the number of accidents at the covered roads but unfortunately did not comply with legal requirements. Are we going to strike down this local government enactment due to its legal infirmities or uphold it as a successful measure of general welfare?

Antecedents

Petitioner Municipality of Tupi, represented by its Municipal Mayor Reynaldo S. Tamayo, Jr., noted a high rate of accidents along the national highway starting from Crossing Barangay Polonuling all the way up to Crossing Barangay Cebuano. To address the problem, the Sangguniang Bayan of the Municipality of Tupi, Province of South Cotabato, on March 3, 2014, enacted Ordinance No. 688, Series of 2014, known as the "Speed Limit Ordinance."[1] It prescribes speed limits for all types of vehicles traversing this stretch of the national highway, *viz*:[2]

NAME OF HIGHWAY		MAXIMUM SPEED
Crossing Polonuling to Crossing Acmonan	:	80 kph
Crossing Acmonan to Crossing Cebuano	:	40 kph

The Ordinance further prescribes penalties[3] for violations, *i.e.* a fine of P1,000.00 for the first offense, P1,500.00 for the second offense, and fine of Php2,000.00 or thirty (30) day imprisonment or both for the third offense.[4]

On October 6, 2014, respondent Atty. Herminio B. Faustino was flagged down by local traffic enforcers for over speeding. He was running at seventy kilometers per hour (70 kph) along the expanse of the highway bordering Crossing Acmonan to Crossing Cebuano which had a maximum speed set of 40 kph per the Ordinance. He was fined Php1,000.00 which he paid under protest.[5]

Two (2) days later, on October 8, 2014, respondent filed before the Regional Trial Court-Branch 39, Polomolok, South Cotabato, a petition for *declaratory relief, annulment of the Speed Limit Ordinance, and damages, with prayer for temporary restraining order*[6] entitled *Herminio B. Faustino v. Municipality of Tupi* and docketed as Special Civil Action No. 104-14.

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1 *Rollo*, pp. 33-35.
2 *Id.* at 33.
3 *Id.* at 34.
4 The Ordinance was implemented on May 5, 2014, *rollo*, p. 7.
5 *Id.* at 19.
6 *Id.* at 41-43

Respondent averred that the Ordinance was unconstitutional because it was not published in a newspaper of general circulation in violation of the due process clause of the *Constitution*, the *Local Government Code*, the *Tax Code*, and Republic Act (RA) No. 4136 or the *Land Transportation and Traffic Code*.[7] He prayed that the Ordinance be declared unconstitutional; the fines he and the others paid be refunded to them; and for the shame, besmirched reputation, wounded feelings, and social humiliation he suffered by reason of his apprehension under the unconstitutional ordinance, moral damages be granted him.[8]

On the other hand, petitioner countered that the present action for declaratory relief was unavailing because the Ordinance had already been breached. It was in accord with Section 36 of RA No. 4136, pertaining to the prescriptions on speed limit, *viz*:[9]

MAXIMUM ALLOWABLE SPEEDS	Passengers Cars and Motor-cycle	Motor trucks and buses
1. On open country roads, with no "blinds corners" not closely bordered by habitations.	80 km. per hour	50 km. per hour
2. On "through streets" or boulevards, clear of traffic, with no "blind corners," when so designated.	40 km. per hour	30 km. per hour
3. On city and municipal streets, with light traffic, when not designated "through streets."	30 km. per hour	30 km. per hour
4. Through crowded streets, approaching intersections at "blind corners," passing school zones, passing other vehicles which are stationery, or for similar dangerous circumstances.	20 km. per hour	20 km. per hour

An 80 kph speed limit on vehicles moving along the whole stretch from Crossing Polonuling to Crossing Acmonan (an open country road with no "blinds corners" not closely bordered by habitations); and 40kph, from Crossing Acmonan to Crossing Cebuano (a "through street" or boulevard, clear of traffic, with no "blind corners") - - are both in harmony with RA No. 4136.

The Office of the Solicitor General (OSG) filed its comment through the Provincial Prosecutor of South Cotabato. The OSG noted that the Ordinance imposed stiffer penalties than those imposed by RA No. 4136 specifically on the 30-day imprisonment. The OSG further observed that violation of the Ordinance authorized the confiscation of driver's license and

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7 *Id.* at 41-42.
8 *Id.* at 42.
9 See the trial court's assailed Decision dated January 20, 2016, *rollo*, p. 20.

issuance of Temporary Operator's Permit (TOP), which only a deputized Land Transportation Office (LTO) personnel can legally do.[10]

The OSG submitted that the Ordinance did not conform with RA No. 4136 which itself enjoined all local government units: (a) to enact or enforce ordinances fixing maximum allowable speeds other than those provided in Section 35 of RA No. 4136; (b) classify public highways for traffic purposes and make appropriate signs therefor; and (c) submit a certification to the LTO Commissioner of the names, locations, and limits of all "through streets" designated as such.[11]

The Trial Court's Ruling

By Decision dated January 20, 2016, the trial court declared the Ordinance void *ab initio*.[12] It further ordered petitioner to refund all the fines thus far collected by virtue of the Ordinance. Its dispositive portion reads:

> **IN LIGHT OF THE FOREGOING,** the **PETITION** is **GIVEN DUE COURSE** and the Court hereby **DECLARES** Municipal Ordinance No. 688, Series of 2014 of respondent Municipality of Tupi to be **INVALID** and **VOID *ab initio***. Respondent Municipality is hereby **PERMANENTLY ENJOINED** from enforcing and implementing said ordinance. Further, it is DIRECTED to **IMMEDIATELY REFUND** all the accrued-collected fines imposed in the implementation thereof.
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> **SO ORDERED.**[13]

The trial court opined that prior breach of the Ordinance did not prevent respondent from questioning its validity because its further implementation would anyway result in future violations. It pronounced that future violations of the Ordinance are inevitable because there would always be people driving at an average of 80 kph per hour along a national highway which although in accordance with RA No. 4136 is at the same time in violation of the 40 kph enjoined by the Ordinance.[14]

While the trial court sustained petitioner's authority under its ordinance making power, it found that the Ordinance here have contravened RA No. 4136 because:[15]

1) There was no prior classification of, nor markings and signages on, public highway, nor a certificate thereof submitted to the LTO; and

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[10] *Id.*
[11] See the trial court's assailed Decision dated January 20, 2016, *rollo*, p. 20.
[12] *Id.* at 19-28.
[13] *Id.* at 27.
[14] *Id.* at 22.
[15] *Id.* at 23-26.

2) The Ordinance which imposed uniform speed limits for all types of motor vehicles passing petitioner's jurisdiction contradicted RA No. 4136 which classifies the types of vehicles into "passenger cars and motorcycles" and "motor trucks and buses" and prescribes different speed limit on each classification of vehicles.

The trial court, however, did not declare the Ordinance unconstitutional in view of the alleged lack of any supporting evidence or argument to warrant such declaration.[16]

Both petitioner and respondent filed their respective motions for reconsideration. Respondent pressed for a judicial declaration of unconstitutionality and for the grant of his claim for damages. For its part, petitioner maintained that a petition for declaratory relief was not proper in this case and that the trial court's directive for refund of all the collected fines was devoid of basis.

Under its Omnibus Order dated May 15, 2017,[17] the trial court denied the motions for reconsideration. At the same time, it granted respondent's motion for execution which means halting the implementation of the Ordinance.

The Present Petition

Petitioner now urges the Court to exercise its power of judicial review on a pure question of law.[18] Claiming that the Ordinance is valid, petitioner argues, in the main:[19]

(1) The Ordinance was enacted in accordance with RA No. 4136.[20] The speed limits prescribed under the Ordinance are within the maximum allowable speeds under Section 35, RA No. 4136.[21]

(2) The speed limit of 80 kph for vehicles traversing the national highway along Crossing Polonuling to Crossing Acmonan conforms with Section 35 of RA No. 4136 which considers this speed limit applicable to "open country roads, with no 'blinds corners' not closely bordered by habitations." There are few residential houses and industrial buildings in the area. These are the characteristics of the whole stretch for Crossing Polonuling to Crossing Acmonan.[22]

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[16] *Id.* at 23-24.
[17] *Id.* at 29-31.
[18] *Id.* at 6-18.
[19] *Id.* at 6-18.
[20] *Id.* at 11.
[21] *Id.* at 13.
[22] *Id.* at 12.

(3) The speed limit of 40 kph for vehicles traversing the national highway along Crossing Acmonan to Crossing Cebuano is consistent with Section 35 of RA 4136 which considers this limit suitable for "on through streets" or boulevards, clear of traffic, with no 'blind corners,' when so designated." The road is closely bordered by habitations due to the presence of establishments such as churches, schools, businesses, residential houses, and the Municipal Hall and Municipal Plaza.[23]

(4) The Ordinance substantially complies with the command of Section 38, RA No. 4136 pertaining to the classification of public highways. The Land Transportation Office (LTO) is the agency tasked to approve the classification of streets submitted by the local government units. The LTO, therefore, bears the requisite legal personality to question the Ordinance if truly it does not comply with RA No. 4136. Notably, the LTO here issued Deputation Orders authorizing the Philippine National Police (PNP) and petitioner's local traffic enforcers to implement the provisions of the Ordinance.[24]

(5) The trial court's order of refund is devoid of basis. The Ordinance should have been upheld as valid and constitutional. Respondent filed the petition in his personal capacity and not on behalf of a class. If at all, petitioner may only be required to refund the amount which respondent had paid but not those paid by persons who are not before the court.[25]

(6) RA No. 4136 was enacted purposely to protect the commuters and drivers from road accidents. The Ordinance is a concrete measure to reduce the number of, if not, to totally eradicate, accidents occurring within its jurisdiction. In fact, for the period the Ordinance was being implemented, the number of accidents within the covered areas was drastically reduced.[26]

(7) As for the publication issue, the trial court already stated that the Ordinance is to be presumed valid.[27]

Respondent's Comment

In his Comment dated July 27, 2017,[28] respondent substantially ripostes:

(a) The Ordinance contravenes Section 36 of RA No. 4136 directing that no local government unit should enact or enforce any ordinance prescribing speed limits different from those provided in the law

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[23] *Id.* at 13.
[24] *Id.* at 13-14.
[25] *Id.* at 14-15.
[26] *Id.* at 15.
[27] See petitioner's Comments (Reply) dated October 24, 2017, *rollo*, pp. 63-65.
[28] *Rollo*, pp. 51-55.

itself. The Ordinance has failed to classify the types of roads and vehicles which it covers.[29]

(b) The Ordinance did not comply with the publication requirement in violation of Section 59 of the Local Government Code of 1991.[30]

Issues

1. Is a petition for declaratory relief the proper remedy at the first instance to assail the validity of Municipal Ordinance No. 688, Series of 2014?

2. Did Municipal Ordinance No. 688, Series of 2014 comply with the publication requirement under the Local Government Code of 1991?

3. Does Municipal Ordinance No. 688, Series of 2014 violate RA No. 4136?

4. Is the trial court's directive for refund of all fines thus far collected pursuant to Municipal Ordinance No. 688, Series of 2014 proper?

Ruling

Declaratory relief is not the proper remedy to assail the validity of Ordinance No. 688.

The petition for declaratory relief initiated by respondent below is not the proper remedy to challenge the validity of Municipal Ordinance No. 688, Series of 2014. For the Ordinance has already been enforced and the penalty for its violation imposed against respondent. ***Aquino v. Municipality of Malay, Aklan, et al.***[31] decreed:

> a. Declaratory relief no longer viable
>
> Resolving first the procedural aspect of the case, We find merit in petitioner's contention that the special writ of certiorari, and not declaratory relief, is the proper remedy for assailing EO 10. As provided under Sec. 1, Rule 63 of the Rules of Court:
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> SECTION 1. Who may file petition. – Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance or any other governmental regulation may, **before breach or violation thereof**, bring an action in the appropriate Regional Trial Court to determine any

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[29] *Rollo*, pp. 51-52.
[30] *Rollo*, pp. 53-54.
[31] 744 Phil. 497, 509-510 (2014).

> question of construction or validity arising, and for a declaration of his rights or duties, thereunder. x x x (Emphasis in the original)
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> **An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder.** Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, **and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute**, deed or contract **to which it refers**. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.
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> **In the case at bar, the petition for declaratory relief became unavailable by EO 10's enforcement and implementation.** The closure and demolition of the hotel rendered futile any possible guidelines that may be issued by the trial court for carrying out the directives in the challenged EO 10. Indubitably, the CA erred when it ruled that declaratory relief is the proper remedy given such a situation.

The appropriate remedy in the premises is certiorari and prohibition. ***Department of Transportation et al. v. Philippine Petroleum Sea Transport Association et al.***[32] enunciated that the power of judicial review includes determining whether there has been grave abuse of discretion on the part of any branch or instrumentality of the Government, which includes the legislative assembly of a local government unit. Further:

> **There is a grave abuse of discretion when there is patent violation of** the Constitution, **the law**, or **existing jurisprudence**. On this score, it has been ruled that "the remedies of certiorari and prohibition are necessarily broader in scope and reach, and **the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed** not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction **by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions**." Thus, petitions for certiorari and prohibition are the proper remedies where an action of the legislative branch is seriously alleged to have infringed the Constitution. *(emphasis added)*

An earlier case, ***Ferrer v. Bautista et al.***[33] already propounded a similar ruling.

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[32] G.R. No. 230107, July 24, 2018.
[33] 762 Phil. 232 (2015).

In any event, while it is true that respondent availed of a wrong initiatory remedy, the need to finally resolve the issues involved here far outweighs the rigid application of the rules.[34] This is especially true where all the allegations essential to a petition for certiorari and prohibition questioning the validity of a municipal legislation have been pleaded as in this case. The Court, thus, treats the petition below as a petition for certiorari and prohibition.

Ordinance No. 688 did not comply with the publication requirement.

The publication requirement is found in Section 59 of the Local Government Code of 1991, *viz*:

> **Section 59.** *Effectivity of Ordinances or Resolutions.* -
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> (a) x x x x
>
> (b) The secretary to the sanggunian concerned shall cause the **posting of an ordinance** or resolution **in the bulletin board at the entrance of** the provincial capitol and the city, **municipal,** or barangay **hall in at least two (2) conspicuous places in the local government unit concerned not later than five (5) days after approval thereof.**
>
> The text of the ordinance or resolution shall be disseminated and posted in Filipino or English and in the language understood by the majority of the people in the local government unit concerned, and the secretary to the sanggunian shall record such fact in a book kept for the purpose, stating the dates of approval and posting.
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> (c) The **gist of all ordinances with penal sanctions shall be published in a newspaper of general circulation within the province where the local legislative body concerned belongs. In the absence of any newspaper of general circulation** within the province, **posting of such ordinances shall be made in all municipalities** and cities of the **province where the sanggunian of origin is situated.**
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> x x x x x x x x x
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> **Section 511.** *Posting and Publication of Ordinances with Penal Sanctions.*
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> (a) Ordinances with penal sanctions shall be **posted at prominent places in the** provincial capitol, city, **municipal** or barangay **hall**, as the case may be, **for a minimum period of three (3) consecutive weeks**. Such ordinances shall also be **published in a newspaper of general circulation, where available, within the territorial jurisdiction of the local government unit concerned**, except in the case of barangay ordinances. Unless otherwise provided therein, said ordinances shall take effect on the day following its publication, or at the end of the period of posting, whichever occurs later.

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[34] *Department of Transportation et al. v. Philippine Petroleum Sea Transport Association et al.*, supra note 33.

(b) x x x x

(c) The secretary to the sanggunian concerned shall transmit official copies of such ordinances to the chief executive officer of the Office Gazette within seven (7) days following the approval of the said ordinance for publication purposes. The Official Gazette may publish ordinances with penal sanctions for archival and reference purposes. (Emphasis supplied)

The fact that Ordinance No. 688 did not comply with the publication requirement is beyond dispute.

For one, the Ordinance itself bears a singular requirement for its effectivity, *i.e.* posting in three (3) conspicuous places, thus:

SECTION IX. EFFECTIVITY. This Ordinance shall take effect immediately after fifteen (15) days posting in three (3) conspicuous places.[35]

While the Local Government Code of 1991 does not require publication in all instances especially when there is no newspaper of general circulation within the province, there is no evidence here indicating at all that such newspaper of general circulation is indeed unavailable within the entire Province of South Cotabato. It bears emphasis that petitioner itself does not even seek exemption from the publication requirement based on such ground.

For another, petitioner has not refuted explicitly, nay, impliedly that the Ordinance has never been published in any newspaper of either general or local circulation.

In ***Coca-Cola Bottlers Philippines, Inc. v. City of Manila, et al.***,[36] the Court invalidated the tax ordinance increasing the tax rates applicable to certain establishments operating within the territorial jurisdiction of the City of Manila for lack of proper publication. The Court explained that the essence of publication is to inform the people and the entities which may likely be affected of the existence of the tax measure. The Court emphasized that strict observance of said procedural requirement is the only safeguard against any unjust and unreasonable exercise of the local government unit's power by ensuring that the people affected are notified through publication of the existence of the measure, and are therefore able to voice out their views or objections to said measure.

Here, considering that the Ordinance was not at all published in any newspaper of either general or local circulation, the owners and drivers of all

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[35] *Rollo*, p. 34.

[36] See 526 Phil. 249, 253 (2006).

vehicles traversing along the areas covered by the Ordinance were not properly informed of the prescribed speed limits thereunder.

Since Ordinance No. 688 did not comply with the publication requirement under the Local Government Code of 1991, it did not become effective, much less, enforceable.

Ordinance No. 688 contravenes Sections 35, 36, and 38 of RA No. 4136.

RA No. 4136 relevantly states:

Section 35. *Restriction as to Speed.* –

(a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than is reasonable and proper, having due regard for the traffic, the width of the highway, and of any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such a speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead.

(b) Subject to the provisions of the preceding paragraph, the rate of speed of any motor vehicle shall not exceed the following:

MAXIMUM ALLOWABLE SPEEDS	Passengers Cars and Motor-cycle	Motor trucks and buses
1. On open country roads, with no "blinds corners" not closely bordered by habitations.	80 km. per hour	50 km. per hour
2. On "through streets" or boulevards, clear of traffic, with no "blind corners," when so designated.	40 km. per hour	30 km. per hour
3. On city and municipal streets, with light traffic, when not designated "through streets."	30 km. per hour	30 km. per hour
4. Through crowded streets, approaching intersections at "blind corners," passing school zones, passing other vehicles which are stationery, or for similar dangerous circumstances.	20 km. per hour	20 km. per hour

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Section 36. *Speed Limits Uniform Throughout the Philippines.* - No provincial, city or municipal authority shall enact or enforce any ordinance or resolution specifying maximum allowable speeds other than those provided in this Act.

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> **Section 38.** *Classification of Highways.* - Public highways shall be properly classified for traffic purposes by the provincial board, municipal board or city council having jurisdiction over them, and said provincial board, municipal board or city council shall provide appropriate signs therefor, subject to the approval of the Commissioner. It shall be the duty of every provincial, city and municipal secretary to certify to the Commissioner the names, locations, and limits of all "through streets" designated as such by the provincial board, municipal board or council.

To be valid and enforceable, an ordinance regulating land transportation and traffic rules should comply with the following pre-requisites under Section 38 of RA No. 4136:

(1) The LGU must first classify its public highways according to the categorization provided in Section 35 of RA No. 4136;

(2) The public highways, after having been classified, must be specially marked. Logically, such markings must be visible to the public;

(3) The secretary of the local government unit shall certify to the Land Transportation Office the names, locations and limits of all "through streets" designated as such by the respective local government unit's legislative body;

(4) The classification of public highways and posting signs must both be approved by the Land Transportation Office.

Here, these pre-requisites were altogether not complied with insofar as Ordinance No. 688 is concerned.

We revisit our Decision in the strikingly similar case of ***Primicias v. the Municipality of Urdaneta, Pangasinan, et al.***[37] In that case, We affirmed the ruling of the Court of First Instance of Lingayen Pangasinan which declared void the ordinance passed by the Municipality of Urdaneta which prescribes speed limits along the national highways within its jurisdiction. We affirmed the nullity of the ordinance because of its failure to comply with the prerequisites of classification of streets, posting of signs, and approval by the LTO, as provided in RA No. 4136. We said:

> Under this section, a local legislative body intending to control traffic in public highways is supposed to classify, first, and then mark them with proper signs, all to be approved by the Land Transportation Commissioner. To hold that the provisions of Section 38 are mandatory is sanctioned by a ruling that "statutes which confer upon a public body or officer . . . power to perform acts which concern the public interests or rights of individuals,

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[37] 182 Phil. 42, 48 (1979), citing *Vda. de Mesa, et al. v. Mencias, et al.*, L-24583, October 29, 1966, 18 SCRA 533, 542.

> are generally, regarded as mandatory although the language is permissive only since these are construed as imposing duties rather than conferring privileges."
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> The classifications which must be based on Section 35 are necessary in view of Section 36 which states that "no provincial, city or municipal authority shall enact or enforce any ordinance or resolution specifying maximum allowable speeds other than those provided in this Act." In this case, however, there is no showing that the marking of the streets and areas falling under Section 1, par. (a), Ordinance No. 3, Series of 1964, was done with the approval of the Land Transportation Commissioner. Thus, on this very ground alone, the Ordinance becomes invalid. Since it lacks the requirement imposed by Section 38, the provincial, city, or municipal board or council is enjoined under Section 62 of the Land Transportation and Traffic Code from "enacting or enforcing any ordinance or resolution in conflict with the provisions of this Act."

Much as we appreciate and encourage petitioner's good intentions in enacting Ordinance No. 688, we cannot be blind to the clear procedural and substantial lapses tainting its enactment and implementation.

We adhere to the hierarchy of legal rules - municipal ordinances are inferior in status and subordinate to the laws of the State. Thus, in case of conflict between an ordinance and a statute, the ordinance must be set aside.[38] So must it be.

Order to refund the fine paid by respondent is warranted in the instant petition for certiorari and prohibition, but not the fines collected from the other motorists.

As a rule, a claim for damages may not be joined with an action for declaratory relief.[39] We reiterate though that for the reasons heretofore stated, the initiating petition before the trial court could not have been one for declaratory relief; but a petition for certiorari and prohibition. Rule 65 of the Rules of Court provides:

> **Section 1.** *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and **praying that judgment be rendered**

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[38] *Id.* at 46, citing Am. Jur. 2d Sec. 374, p. 406 and *City of Basilan v. Hechanova*, L-23941, August 30, 1974, 58 SCRA 711.

[39] *Adlawan et al. v. Intermediate Appellate Court et al.*, 252 Phil. 165 (1989).

> **annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.**
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> x x x x x x x x x
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> **Section 2.** *Petition for prohibition.* — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and **praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.** (Emphasis supplied)

These provisions contrast with the provision on mandamus which allows *expressly* the joinder of a claim for damages:

> Section 3. *Petition for mandamus.* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and **praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner**, and **to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.** (Emphasis supplied)

May respondent's prayer for the refund of the P1,000.00 fine imposed on him under Ordinance No. 688 be considered an **incidental relief** to the principal relief of the nullification of the Ordinance?

The Court rules it is. **Incidental** means "[c]*ontingent upon or pertaining to something that is more important; that which is necessary, appertaining to, or depending upon another known as the principal."*[40] ***Incidental*** *is synonymous with "accessory, accidental, added, additional, allied, associated, attendant."*[41]

An accessory or allied relief to the nullification of Ordinance No. 688 is the refund of the fine of P1,000.00 collected from respondent. The latter

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[40] The Free Dictionary at https://legal-dictionary.thefreedictionary.com/incidental (last accessed August 7, 2019).

[41] *Id.*

relief is germane to the principal relief. Where the law under which money was collected is declared unconstitutional or invalid, it follows that the collection itself is erroneous or illegal, thus, the refund of the money so collected is the incidental, accessory or allied consequence of the declaration. This is the ruling in ***Ferrer v. Bautista et al.***[42] and ***American Bible Society v. City of Manila.***[43] The trial court, therefore, correctly granted respondent's plea for refund of the P1,000.00 fine imposed on him.

But the trial court erred in directing the refund of ***all*** other fees collected from other motorists under Ordinance No. 688. In the first place, respondent never made any representation that he was acting on behalf of all the other persons who were similarly penalized for violating Ordinance No. 688. In the second place, there was no evidence presented to show the personal circumstances of these persons who were similarly fined. Finally, these other persons were not joined as parties in the instant petition.

The Rules of Court provides that "where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest."[44] Since the other persons mentioned by respondent and the trial court were not properly joined as parties here, then they could not be entitled to the benefits or avails of this specific suit.[45]

A relevant question comes to fore: does the operative doctrine apply in our directive to refund the P1,000.00 fine imposed on respondent?

Senior Justice Antonio Carpio discussed in ***Commissioner of Internal Revenue v. San Roque Power Corporation***[46] the metes and bounds of the operative fact doctrine:

> The Doctrine of Operative Fact
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> The **general rule is that a void law or administrative act cannot be the source of legal rights or duties**. Article 7 of the Civil Code enunciates this general rule, as well as its exception: "Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary. When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."
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> **The doctrine of operative fact is an exception to the general rule**, such that a **judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such**

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[42] Supra note 34.
[43] 101 Phil. 386 (1957).
[44] Rules of Court, Rule 3, Section 3.
[45] Rules of Court, Rule 3, Section 2.
[46] 719 Phil. 137, 157-158 (2013).

declaration. In Serrano de Agbayani v. Philippine National Bank, the application of the doctrine of operative fact was discussed as follows:

> The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.
>
> **Such a view** has support in logic and possesses the merit of simplicity. It **may not however be sufficiently realistic**. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. **Parties may have acted under it and may have changed their positions.** What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.
>
> In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination of unconstitutionality, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in Araneta v. Hill and the decision in Manila Motor Co., Inc. v. Flores. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in Fernandez v. Cuerva and Co...

Clearly, for the operative fact doctrine to apply, there must be a "legislative or executive measure," meaning a law or executive issuance, that is invalidated by the court. *From the passage of such law or promulgation of such executive issuance until its invalidation by the court, the effects of the law or executive issuance,* **when relied upon by the public in good faith**, *may have to be recognized as valid.* x x x (Emphasis supplied)

In ***Araullo v. Aquino***,[47] then Associate Justice (now Chief Justice) Lucas Bersamin, echoing Associate Justice Arturo Brion, further explained the practical application of the operative fact doctrine:

> The paragraphs 3 and 4 of page 90 of the Decision alluded to by the respondents read:
>
> > Nonetheless, as Justice Brion has pointed out during the deliberations, **the doctrine of operative fact** does not always apply, and is not always the consequence of every declaration of constitutional invalidity. It **can be invoked only in situations where the nullification of the effects of what used to be a valid law would result in inequity and injustice; but where no such result would ensue, the general rule that an unconstitutional law is totally ineffective should apply**.
> >
> > In that context, as Justice Brion has clarified, **the doctrine of operative fact can apply only to the PAPs that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the** DAP, but cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities....
>
> **As a general rule, the nullification of an unconstitutional law or act carries with it the illegality of its effects. However, in cases where nullification of the effects will result in inequity and injustice, the operative fact doctrine may apply.** In so ruling, the Court has essentially recognized the impact on the beneficiaries and the country as a whole if its ruling would pave the way for the nullification of the ₱144.378 Billions worth of infrastructure projects, social and economic services funded through the DAP. Bearing in mind the disastrous impact of nullifying these projects by virtue alone of the invalidation of certain acts and practices under the DAP, the Court has upheld the efficacy of such DAP-funded projects by applying the operative fact doctrine. For this reason, we cannot sustain the Motion for Partial Reconsideration of the petitioners in G.R. No. 209442. (Emphasis added)

The operative fact doctrine does not apply here because:

One. This doctrine was not raised by any party at any time the instant case was before the trial court and before us. Hence, as to this doctrine, the parties have not been heard. It would not be fair to prejudice any of them on a point that neither has argued. Besides, Section 8, Rule 51, in relation to Section 4 of Rule 56, Rules of Court, precludes us from deciding a case on the basis of an alleged error that the parties have not raised before the Court.[48]

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[47] 752 Phil. 716, 777 and 780 (2015).

[48] **Section 8.** *Questions that may be decided.* — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

Two. There was no reliance **by the public in good faith** upon the Municipal Ordinance. In fact, **the public was upfront in challenging the validity** of the Municipal Ordinance. There were **no public beneficiaries** of the Municipal Ordinance – at least none that we know of, precisely because the doctrine was not raised and argued by any of the parties. Further, it **cannot be said that the assailed effect of the Municipal Ordinance – collection of fines – cannot be undone**. The **fines can in fact be restored** to the respondent. **No one has come forward to argue that the fines can no longer be refunded** because, for example, the Municipality has become bankrupt. The fines to be reimbursed to the respondent are in the form of fungible goods that can be satisfied by any other collection of money in the amount collected. There is also **no inequity or injustice** that would arise from the refund of the fines. To be sure, the converse is true. It would be **iniquitous and unjust** to deny respondent the refund of the moneys he had paid under protest pursuant to an illegal exaction when (i) the Municipality had then and has now neither the authority nor the right to get the money from him, and (ii) in similar situations in the past, the Court has consistently decreed the refund of illegal collections, and therefore, in the process, treat respondent differently from similarly situated members of the public.

ACCORDINGLY, the petition for review on certiorari is **DENIED**. The Decision dated January 20, 2016 and the Omnibus Order dated May 15, 2017 of the Regional Trial Court-Branch 39, Polomolok, South Cotabato, in Special Civil Action No. 104-14 are **AFFIRMED with MODIFICATON**. The order for petitioner Municipality of Tupi to refund all fines collected from motorists other than respondent Herminio B. Faustino is **DELETED.**

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

(On official leave)
LUCAS P. BERSAMIN
Chief Justice

ANTONIO T. CARPIO
Associate Justice
Acting Chief Justice

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

(On leave)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

(On official leave)
ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Acting Chief Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court